

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
WABASH VALLEY POWER ASSOCIATION, INC.,)
for approval of a proposed tariff relating to the)
purchase of electricity from qualifying facilities.)
_____)

Case No. U-11013

At the July 31, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

ORDER DENYING REHEARING

On May 7, 1997, the Commission denied an application filed by Wabash Valley Power Association, Inc., (Wabash) for approval of a proposed tariff governing the purchase of electricity from qualifying facilities. On June 6, 1997, Wabash filed a petition for rehearing. On June 27, 1997, Fruit Belt Electric Cooperative (Fruit Belt) filed an answer.

In the petition, Wabash argues that the Commission's decision not to approve rates for purchasing power from qualifying facilities was the unintended consequence of its determination that it should not decide the extraneous issues raised by Fruit Belt. Wabash contends that its proposed rates are just and reasonable and are required by federal law. It adds that the evidence put forward in support of the application was uncontested. According to Wabash, the rates equal its avoided cost and, by definition, cannot affect the wholesale rates that it charges Fruit Belt for

power. Wabash further argues that its avoided cost is updated every two years, which will enable it to respond to changes caused by regulatory restructuring.

Fruit Belt responds that Wabash's application is an attempt to displace Fruit Belt's rights as a purchaser from qualifying facilities. Fruit Belt contends that the Commission acted appropriately in declining to decide this question in the absence of an actual controversy.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission concludes that Wabash's petition for rehearing should be denied because it does not meet the criteria of Rule 403.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. Wabash's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

John G. Strand

Chairman

(S E A L)

John C. Shea

Commissioner

David A. Svanda

Commissioner

By its action of July 31, 1997.

Dorothy Wideman

Executive Secretary

THEREFORE, IT IS ORDERED that the petition for rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of July 31, 1997.

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Suggested Minute:

“Adopt and issue order dated July 31, 1997 denying the petition for rehearing filed by Wabash Valley Power Association, Inc., as set forth in the order.”